

## THE WEEKLY CLARION.

DECISIONS OF THE HIGH COURTS  
OF ERRORS AND APPEALS.

APRIL TERM, 1866.

Reported Expressly for the Clarion.

William H. Yancey,

Geo. W. Henderson et al.

Error in the Chancery Court of Monroe County.

H. T. ELLIOTT DELIVERED THE OPINION  
OF THE COURT.

The plaintiff in error, on the 29th of February, filed a bill in the Chancery Court of Monroe county against George W. Henderson and others, alleging that on the 29th of May, 1859, he had recovered a judgment against the defendant in error, F. M. Rogers, and F. M. Rogers, and R. H. Dalton, for \$765.25, which remained wholly unpaid.

That on the 27th of May, 1857, said Henderson had conveyed certain slaves to said F. M. Rogers, in trust for said Henderson and wife. That the said Henderson was insolvent at the time, and that the said conveyance was voluntary and without consideration, and was made to hinder, delay and defraud his creditors. That the pretended considerations expressed in the said conveyance, had no existence. That the slaves remained in the possession of said Henderson until after the death of his wife, when the defendant, F. M. Rogers, was appointed guardian of his children, and took the slaves into his possession. That plaintiff in error, on the 29th of October, 1859, filed his petition upon the original judgment, and there being no other property on which a levy could be made, said slave was levied on said slaves, but no sale has been made on account of the claim and insuperiority on the title created by the said deed from Henderson to F. M. Rogers, on account of which nothing could have been realized by a sale. The bill prayes that the said debt may be declared fraudulent and void, and for other relief.

The defendant demurred to the bill for several causes, among which in effect to this, to-wit, that as complainant did not allege the title of F. M. Rogers, and R. H. Dalton, two of the defendants to the original judgment at law, there was no adequate remedy at law, and no necessity to resort to equity for relief.

The Court sustained the demurser and dismissed the bill, from which decree the complainant brought this writ of error.

It is universally agreed that a creditor cannot go into a court of equity to object to valid assets, or sue in action, not subject to be taken upon execution to the payment of his debt, until he has first obtained judgment at law upon his debt, and issued execution and has a return of "with hold." *Tar-  
get vs. Harris, et al.* 11 S. & M. 366; *Brown  
vs. The Bank of Mississippi*, 31 Miss., 458.

And where property legally liable to execution has been fraudulently conveyed or inumbered, the application to chancery is to remove an obstruction which prevents a legal lien from operating upon the same, and in such case the better opinion seems to be that the creditor need only proceed at law to the chancery to give him a complete title, and that a judgment which operates as a lien upon the property sought to be changed, would be sufficient. *Hitzholtz  
vs. Drane*, 10 S. & M., 556; *Berryman vs. Sub-  
livan*, 13 S. & M., 65; *Fowler vs. McCarty*, 27 Miss., 591; *Snedgwick vs. Andrew*, 29 Miss., 472; *1 American Lending Cases*, 49, 84; *Notes to Lexicon vs. Whiston, and Salmon  
vs. Bonelli*.

Clauses of property made with intent to hinder, delay or defraud creditors, are declared, by the statute of frauds, to be "clearly and utterly void" as against the creditors affected by them. The right of the property creditor to levy his execution upon property so conveyed, and to proceed at law to effect it, and for the satisfaction of his debt, cannot be denied, and that the creditor can, if he so pleases, sue in action to recover any sum, whether the debtor possesses or does not mean to do, or whether there are other defendants having property liable to the same judgment. In other words, it is not necessary in order to justify the levy of an execution upon property fraudulently conveyed, that the plaintiff should show, or that the facts should exist, that neither the party who has made such conveyance, nor his co-defendants in the judgment, have other property upon which a legal claim can be made. We do not mean to say that every voluntary conveyance of a single item, within the bounds of the state. The plaintiff making a claim on the property, undertakes the responsibility of showing that, upon the circumstances of the particular case, the transaction is one which the law will not sustain.

In the present case the levy has been made on the property alleged to have been fraudulently transferred, and the plaintiff comes into a court of equity to have the conveyance set aside as a cloud upon the title to it upon the tide, preventing a sale of it for its value. His right to do this, however, is not clear; for all that the property might be sold in its present situation on the execution at law, the equity will not require the creditor to sell it doubtful or obstructed title at law, but will set aside the conveyance, and remove the obstructions to a fair sale. *Fowler vs.  
McCarty*, 27 Miss., 561; *1 Am. Lead. Cas.*, 83.

The demurser admits the fraud charged on the bill, and in our opinion, ought to have been disallowed, and the defendant entitled to answer. The bill will therefore be reversed, and the cause remanded for such proceedings in the court below, in conformity with this opinion, as under present circumstances may be advised.

Isa. Tharp,  
[10,285] et al.  
Marsh & Pendleton.  
Error to Special Court of Equity at Brooklyn.MR. JUSTICE HARRIS DELIVERED THE OPINION  
OF THE COURT.

The defendants in error filed their petition in the Special Court of Equity, stating that in the month of June, 1865, they employed plaintiff in error, and sent him to Simpson county, in this State, to buy cotton for them, and furnished him with goods and money for that purpose, for such a sum to have one-fourth of the net profits arising from the sale of the goods and cotton for his own account. That said Tharp had no capital of his own. That with the capital furnished by defendants in error he purchased and remitted to them forty-three bales of cotton. That having reason to doubt the correctness of his dealings, sent an agent to demand ten bales of ginned cotton, and six hundred pounds of seed cotton, in his possession, and purchased with their money and goods; also, merchandise to the value of sixteen thousand dollars, and a large amount of money, \$6,000, belonging to defendants in error, which the said agent, after demand, failed to obtain.

They allege that they believe Tharp owes them about \$4,300, and that he will dispose of and remove said property unless restrained by the order of said court. That they have terminated, may further agency of said Tharp for them, and pray a writ of sequestration, and for an injunction, and an injunction for a decree of specific performance of the contract in law, or delivery up all of said property to defendants in error, subject to said credit of one-fourth of the net profits, as above, and for its alternative value, and damages, and for such other or further relief, etc.

This petition the plaintiff in error filed his demurser—1st, for want of jurisdiction, and 2d, because the petition seeks a settlement of partnership accounts, and not a specific performance of a contract in relation to cotton, or other personal contracts expressed or implied.

## LAWS OF THE UNITED STATES,

Passed at the First Session of the Thirty-Ninth  
Congress.CHAP. XX.—AN ACT to amend an Act  
to extend the Charter of the President  
and Directors of the Fireman's Insurance  
Company at Washington and Georgetown,  
in the District of Columbia.It is enacted by the Senate and House of Rep-  
resentatives of the United States of America in  
Congress assembled, That the sixth, seventh,  
eighth, ninth, and tenth sections of the act to  
incorporate the president and directors of the  
Fireman's Insurance Company of Wash-  
ington and Georgetown, in the District of Columbia,  
approved March third, eighteen hundred  
and thirty-seven, and which was ex-  
tended by the act approved March twenty-  
fourth, eighteen hundred and fifty-seven, be  
repealed.

The grounds of error relied on, are that the court had no jurisdiction. That the court erred in rendering a decree against the plaintiff in error, and that the demurser should have been sustained.

We think it clear that the demurser to the petition should have been sustained. The contract stated in the petition was not a "contract for creation of other personal property," but a contract to engage in a speculation on a part of goods, and the purchase of cotton from third parties. The parties to the contract became partners; neither had the exclusive right, so far as the contract shows, to the possession or control of the cotton when purchased. It is true the petition denominates the plaintiff in error an "agent," but he was also a partner, receiving by the terms of the contract one-fourth of the net proceeds of the sale of the goods and cotton for his interest. The petitioners do not allege that the defendants in error were entitled to the exclusive possession or control of the cotton goods, or other property in controversy; but distinctly admits that the right or property therein is subject to the one-fourth interest of plaintiff in error.

This petition, therefore, instead of being a contract to perform the specific performances of this contract, to buy cotton and sell goods, is rather in the nature of a bill for the dissolution of this contract of partnership, and for an account, a jurisdiction which is not attempted to be had or given in the remote manner allotted to it by the ordinance creating this Special Court.

SEC. 2. And be it further enacted, That the stock of said Firemen's Insurance Company shall be sold, sold, transferred, and held in the same manner that the same might have been issued, sold, transferred, and held had those sections never existed.

APPROVED, March 17, 1866.

CHAP. XXI.—AN ACT relating Doubts in  
Relation to the Validity of certain Loca-  
tions of Lands in the State of Missouri  
made by Virtue of Certificates issued  
under the Act of Congress of February the  
seventeenth, eighteen hundred and fifteen.It is enacted by the Senate and House of Rep-  
resentatives of the United States of America in  
Congress assembled, That hereafter, and un-  
til otherwise provided by law, there shall be  
held annually, on the first Monday in June,  
a term of the district court of the United States  
for the district of Minnesota, at the city of Winona, in said district, and all process  
writs, and recognizances, civil and  
criminal, which may have been, or may be  
issued, and may be made, at Mankato, at  
the earliest date of the last county of New Madrid,  
in the Missouri Territory, who suffered  
any loss or damage, and with like effect as if  
originally made returnable thereto.
SEC. 3. And be it further enacted, That all  
acts or parts of acts which require a term of  
said court to be held at Mankato, in said  
district, be, and the same are hereby, repealed.

APPROVED, April 5, 1866.

CHAP. XXII.—AN ACT relating Doubts in  
Relation to the Validity of certain Loca-  
tions of Lands in the State of Missouri  
made by Virtue of Certificates issued  
under the Act of Congress of February the  
seventeenth, eighteen hundred and fifteen.It is enacted by the Senate and House of Rep-  
resentatives of the United States of America in  
Congress assembled, That all locations of lands  
in the State of Missouri purporting to have  
been made by virtue of certificates issued  
under the act of Congress aforesaid, pur-  
porting to be issued to the said holder of the  
certificate, shall be held invalid, and all  
process, writs, and recognizances, civil and  
criminal, which may have been, or may be  
issued, and may be made, at the earliest date  
of the last county of New Madrid, in the  
Missouri Territory, who suffered any loss or  
damage, and with like effect as if originally  
made returnable thereto.
SEC. 4. And be it further enacted, That all  
acts or parts of acts which require a term of  
said court to be held at Mankato, in said  
district, be, and the same are hereby, repealed.

APPROVED, April 5, 1866.

CHAP. XXIII.—AN ACT relating Doubts in  
Relation to the Validity of certain Loca-  
tions of Lands in the State of Missouri  
made by Virtue of Certificates issued  
under the Act of Congress of February the  
seventeenth, eighteen hundred and fifteen.It is enacted by the Senate and House of Rep-  
resentatives of the United States of America in  
Congress assembled, That hereafter, and un-  
til otherwise provided by law, there shall be  
held annually, on the first Monday in June,  
a term of the district court of the United States  
for the district of Minnesota, at the city of Winona, in said district, and all process  
writs, and recognizances, civil and  
criminal, which may have been, or may be  
issued, and may be made, at Mankato, at  
the earliest date of the last county of New Madrid,  
in the Missouri Territory, who suffered  
any loss or damage, and with like effect as if  
originally made returnable thereto.
SEC. 5. And be it further enacted, That all  
acts or parts of acts which require a term of  
said court to be held at Mankato, in said  
district, be, and the same are hereby, repealed.

APPROVED, April 5, 1866.

CHAP. XXIV.—AN ACT to amend an Act  
entitled "An Act to incorporate a national  
military and navy Asylum, for the Relief  
of the totally disabled Officers and Men of  
the volunteers Force of the United States."It is enacted by the Senate and House of Rep-  
resentatives of the United States of America in  
Congress assembled, That the President of the  
United States, Secretary of War, Chief Justice  
of the Supreme Court, and other members  
of the Senate and House of Representatives  
of the United States, and such other persons  
as from time to time may hereafter be ap-  
pointed by the President, shall be, and are hereby  
authorized to execute and carry into effect  
the provisions of this act.
SEC. 6. And be it further enacted, That a  
board of managers, who shall be chosen  
by a majority of the members of the Senate  
and House of Representatives, shall be  
authorized to lay out a site for the asylum  
and to build a building thereon, and to  
make all necessary arrangements for the  
construction of the same, and to employ  
such labor as may be required.
SEC. 7. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 8. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 9. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 10. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 11. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 12. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 13. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 14. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 15. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 16. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 17. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 18. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 19. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 20. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 21. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 22. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 23. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 24. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 25. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 26. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 27. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 28. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 29. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 30. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 31. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.
SEC. 32. And be it further enacted, That  
the board of managers shall be authorized  
to hire labor, and to pay wages, and to  
allow expenses for the support of the  
asylum, and to make all necessary arrangements  
for the construction of the same, and to  
employ such labor as may be required.